

NORTH CAROLINA
DURHAM COUNTY

03/11/2011

NORTH CAROLINA
DURHAM COUNTY

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

TRAFFIC SEPARATION STUDY AGREEMENT

AND

TIP #: P-3309 D

CITY OF DURHAM

AND

RESEARCH TRIANGLE REGIONAL PUBLIC
TRANSPORTATION AUTHORITY

AND

NORFOLK SOUTHERN RAILWAY COMPANY

THIS AGREEMENT is made and entered into on the last date executed below, by and between the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina, hereinafter referred to as the "Department", the CITY OF DURHAM, a local government entity, hereinafter referred to as the "Municipality", NORFOLK SOUTHERN RAILWAY COMPANY, a corporation of Virginia, hereinafter referred to as "NS" and RESEARCH TRIANGLE REGIONAL PUBLIC TRANSPORTATION AUTHORITY, a regional public transit agency under NCGS 160A-600 et seq., hereinafter referred to as "TTA".

WITNESSETH:

WHEREAS, the Department and the Municipality on August 23, 2001 entered into an agreement to study existing highway/railroad public at-grade crossings within the Municipality; and,

WHEREAS, the Department has plans to eliminate redundant and/or unsafe highway/railroad at-grade crossings statewide in order to promote safer and more efficient traffic operations; and

WHEREAS, the Department, Municipality, NS, and TTA also desire to improve safety at existing highway/railroad public at-grade crossings within the Municipality; and

WHEREAS, due to changes in the study process and participation by other parties, the Department, Municipality, NS, and TTA have agreed that a comprehensive Traffic Separation Study (TSS) and highway/railroad at-grade crossing analysis of the public crossings on the

tracks of CSX Transportation and Norfolk Southern Railway along the North Carolina Railroad Company (NCRR) corridor in the Municipality would benefit the traffic circulation and improve safety within the corridor limits from Neal Road to E. Cornwallis Road; and

WHEREAS, the Department, Municipality, NS, and TTA have agreed that a comprehensive study approach involving extensive public involvement is necessary due to the complexity of the proposed corridor.

NOW, THEREFORE, the parties hereto, each in consideration of the promises and undertakings of the other as herein provided, do hereby covenant and agree, each with the other, as follows:

1. PREVIOUS AGREEMENT:

This agreement voids and rescinds the Traffic Separation Study Agreement executed between the Department and the Municipality on August 23, 2001.

2. OBLIGATORY:

A. GOOD FAITH EFFORT

By signing this Agreement and prior to any work being performed by the Department, all parties to this Agreement consent to make a "good faith effort" to implement the overall recommendations of the study. "Good faith effort" means that all parties to this Agreement will fully participate with the Department in the TSS draft review/approval process, approve the study recommendations, and endeavor to implement project recommendations that are agreeable to all parties.

B. IMPLEMENTATION

All parties to this Agreement will fully participate in the study and approval process described herein and will make good faith efforts to implement the resulting recommended safety projects. Identified projects will be programmed and funded through separate agreements and at a level and arrangement which is consistent with the usual and customary practices of the Department's Crossing Hazard Elimination Program. This may include, but not be limited to matching funds from NS, matching funds, acquisition of right of way and relocation of utilities by the Municipality, and design and construction considerations by TTA for their projects planned along the NCRR corridor.

3. SCOPE OF WORK:

The Department, and/or its agent, shall initiate a comprehensive evaluation, or TSS, of existing safety conditions at public highway-rail grade crossings between and including the Neal Road (SR 1314) and E. Cornwallis Road (SR 1121) crossings, along the NCRR corridor operated by NS, and include the E. Pettigrew Street crossing, along that section of the corridor owned and operated by CSX Transportation. This study will determine the need for improvements to and/or elimination of public grade crossings. The study scope will include an evaluation of pedestrian safety and access needs along the corridor in the area between Chapel Hill Street and Roxboro Street in downtown Durham and consist of the following:

A. PRELIMINARY PUBLIC INVOLVEMENT AND PEDESTRIAN STUDY

- i. Establish a public involvement process, which includes identifying stakeholders

and community/focus groups through a series of Corridor Visioning Public Workshops.

- ii. Meet with the stakeholders after the Corridor Visioning Public Workshops to discuss comments received and initial recommendations for the entire corridor.
- iii. Conduct an evaluation of pedestrian safety and access needs which will identify and recommend specific safety improvements between Roxboro Street and Chapel Hill Street.

B. DOCUMENT COMPLETION

- i. Engineering evaluation of the public highway/rail at-grade crossings within the study area and recommended immediate, near term, and long term safety improvements, including but not limited to crossing closures, grade separations, and roadway and traffic control devices.
- ii. Compilation of comments received during the initial public meetings from stakeholders and community/focus groups. Included in this process will be additional public meetings to present the recommendations to the public. This phase will conclude with the acceptance of the TSS by the Department and all parties to this Agreement.

4. CHANGES TO THE SCOPE:

Any changes to the scope of work must be approved by the Department, Municipality, TTA and NS prior to any work being performed.

5. PROFESSIONAL AND ENGINEERING SERVICES:

The Department shall be responsible for procuring an engineering consulting firm to perform the Traffic Separation Study. This study shall investigate and make recommendations for consolidating and improving safety at public highway/railroad at-grade crossings, including but not limited to examining possible grade separations between tracks and roads, on the railroad corridor described in Section 3 of this agreement. Said study shall be prepared in accordance with Departmental standards and specifications with input from the parties to this agreement and other stakeholders.

6. MEETING SCHEDULE:

A. INITIAL MEETING

Prior to the consulting firm beginning work, a meeting will be held between the Department, Municipality, NS, TTA, and the engineering consultant to discuss the scope of work, deliverables and schedule. The Rail Division shall be responsible for scheduling this meeting at a mutually convenient time.

B. FINAL MEETING:

Upon completion of the draft study, the Department, Municipality, NS, TTA, and the engineering consultant shall meet to discuss the findings and ensure all scoping items have been adequately addressed.

7. FUNDING:

The parties to this Agreement have agreed to participate in the cost of the TSS Study as shown below:

- (a). Department – \$140,000
- (b). Municipality – \$20,000
- (c). NS – \$20,000
- (d). TTA – \$20,000

The estimated total cost of the TSS is \$200,000. It is understood by all parties that the estimated cost is subject to change.

8. REIMBURSEMENT:

Based on the estimated costs, the parties to this Agreement shall submit a check to the Department for their estimated share upon execution of this Agreement by the Department. Payment shall be submitted to the Rail Division within thirty days of the execution date shown on the last page of this Agreement. If the cost of the study is less than the estimated cost, the Department shall reimburse the parties to this Agreement any overpayment based on their percentage of the costs participation. If the cost of the study is more than the estimated cost, the Department shall inform the funding partners and redefine the scope of work to be within the estimated \$200,000 or retain the approved scope of work and enter into a supplemental agreement with the funding partners for the additional work. The parties shall be advised of and concur with any scope changes that could increase the cost of the study before the Department authorizes additional work. Work on the study shall not proceed until the estimated shares are submitted to the Department.

9. AVAILABILITY OF FUNDS

All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if the Department's funds cease to be available.

10. TERMINATION OF PROJECT

The Department shall have the right to abandon the Project at any time it sees fit prior to the time the Municipality, NS, and TTA have been called upon to perform any part of its agreement. In the case of termination by the Department, funds contributed by other partners will be reimbursed by the Department within 60 days of notification of termination.

11. ETHICS PROVISION

The parties acknowledge the requirements of N.C.G.S. § 133-32. In addition, the Department and its employees are bound by the provisions of Executive Order 24 (issued by Governor Perdue on October 1, 2009), which bans State employees from accepting or receiving gifts. By Executive Order 24, issued by Governor Perdue, and N.C. G.S. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services,

Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

- (i) have a contract with a governmental agency; or,
- (ii) have performed under such a contract within the past year; or,
- (iii) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and G.S. Sec. 133-32.

IT IS UNDERSTOOD AND AGREED that project approval by the Department is subject to the conditions of this Agreement and that no expenditure of funds on the part of the Department, Municipality, NS, and TTA will be made until the terms of this Agreement have been complied with on the part of the Department, Municipality, NS, and TTA.

IN WITNESS WHEREOF, this Agreement has been executed, the day and year heretofore set out, on the part of the Department, Municipality, NS, and TTA by authority duly given.

N.C.G.S. 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this Project Agreement, you attest, for your entire organization and its employees or agents, that you are not aware that any gift in violation of N.C.G.S. 133-32 and Executive Order 24 has been offered, accepted, or promised by any employees of your organization.

ATTEST:

CITY OF DURHAM

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

Approved by the City Council of the City of Durham as attested to by the signature of _____, Clerk of the Governing Board on _____ (Date).

This Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

(SEAL)

Finance Officer

Federal Tax Identification Number

City of Durham

Remittance Address:

IN WITNESS WHEREOF, this Agreement has been executed, the day and year heretofore set out, on the part of the Department, Municipality, NS, and TTA by authority duly given.

N.C.G.S. 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this Project Agreement, you attest, for your entire organization and its employees or agents, that you are not aware that any gift in violation of N.C.G.S. 133-32 and Executive Order 24 has been offered, accepted, or promised by any employees of your organization.

ATTEST:

NORFOLK SOUTHERN RAILWAY COMPANY

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

IN WITNESS WHEREOF, this Agreement has been executed, the day and year heretofore set out, on the part of the Department, Municipality, NS, and TTA by authority duly given.

N.C.G.S. 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this Project Agreement, you attest, for your entire organization and its employees or agents, that you are not aware that any gift in violation of N.C.G.S. 133-32 and Executive Order 24 has been offered, accepted, or promised by any employees of your organization.

ATTEST:

RESEARCH TRIANGLE REGIONAL PUBLIC
TRANSPORTATION AUTHORITY

BY: _____
David D. King

TITLE: General Manager

DATE: _____

IN WITNESS WHEREOF, this Agreement has been executed, the day and year heretofore set out, on the part of the Department, Municipality, NS, and TTA by authority duly given.

N.C.G.S. 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this Project Agreement, you attest, for your entire organization and its employees or agents, that you are not aware that any gift in violation of N.C.G.S. 133-32 and Executive Order 24 has been offered, accepted, or promised by any employees of your organization.

ATTEST:

DEPARTMENT OF TRANSPORTATION

BY: _____
Secretary to the Board
of Transportation

BY: _____
DIRECTOR – ENGINEERING & SAFETY
RAIL DIVISION

DATE: _____

DATE: _____

Remittance Address:
North Carolina Department of Transportation
Rail Division, Engineering & Safety Branch
1556 MSC
Raleigh, NC 27699-1556
Attn: Sandra Stepney, PE, Senior Project Engineer

PRESENTED TO BOARD OF TRANSPORTATION ITEM O: _____DATE